IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 164 OF 2007

SHRI. MINGUEL JOSE REBELLO ... Petitioner
Versus
THE LAND ACQUISITION OFFICER AND
THE DEPUTY COLLECTOR AND
SUB-DIVISIONAL OFFICER AND 7 ORS. ... Respondents

Ms. Aparna Shirodkar, Advocate for the petitioner under L.A.S.
Ms. W. Coutinho,Govt. Advocate for the respondents.

Coram:- R.M.S. KHANDEPARKAR &
R. S. MOHITE, JJ.

Date:- 22nd October, 2007

P.C.

Heard the Advocate for the present petitioner. Petitioner is seeking to challenge the acquisition proceedings in relation to the land which is sought to be acquired pursuant to the issuance of notification No.22/35/2005-RD dated 6.12.2005 and publication thereof in Government gazette dated 22.12.2005, on the ground that the proposed acquisition being for the construction of the playground, as there are more than 4 playgrounds in the adjoining areas, there is no need to acquire the land in question for the purpose of construction of playground in the said locality. It is not in dispute that the petitioner had filed necessary objection after publication of the notification U/s.4 of the Land Acquisition Act, 1894. After having conducted the enquiry U/s.5(A) of the said Act,it is found that there is no playground at Maina Curtorim within 3 Kms. radius of the proposed site. As regards the contention on behalf of petitioner that there are playgrounds in the locality, it has been clarified by the respondents in their affidavit dated 27.8.2007 that the contention regarding other playgrounds is not true and that though there are open spaces available in the private properties which are being utilised

for the purpose of playing by the local people, same do not constitute approved playgrounds by the Government. In this circumstances, the materials placed before us nowhere discloses that the finding arrived at by Dy. Collector in enquiry that within 3 Kms. radius from the proposed site, there exists no playground at Curtorim, can be said to be without any basis or that there is any malafide on the part of of the respondents in proposing to acquire the land in question. Apart from said contention about the existance of other playgrounds, there is no other objection raised for acquisition of land in question. The authorities have considered the same and have found that there is no playground within 3 Kms. radius from the proposed site, and hence there is no case made out for interference in the matter. It was sought to be argued that the said open spaces are sufficient for being utilised as playgrounds. We do not find any substance in the said contention. Merely because there are open spaces available in the private properties, they do not constitute to be approved playgrounds. If the Government in the interest of local youths, is trying to develop certain area in the locality as playground, it would not justify interference by exercising powers under Article 226 of Constitution of India, in absence of any arbitrary exercise of powers in the matter of acquisition of land and as no such case is made out, we find no substance in the petition. Hence, the petition fails and is hereby rejected.

R.M.S. KHANDEPARKAR, J.

R. S. MOHITE, J.

SMA